

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:07-CR-140-BR
No. 5:10-CV-361-BR

CHARLES BERNARD ROBINSON.,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

This matter is before the court on petitioner's motion pursuant to Federal Rule of Civil Procedure 60(b)(6). (DE # 101.) Petitioner seeks relief from the court's 18 February 2011 order which dismissed petitioner's 28 U.S.C. § 2255 motion as untimely. (Id. at 3.) Petitioner appears to continue to seek to challenge his career offender designation, citing the following decisions: United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc); United States v. Miller, 735 F.3d 141 (4th Cir. 2013); and Whiteside v. United States, 748 F.3d 541 (4th Cir. 2014), reh'g en banc granted, No. 13-7152 (4th Cir. July 10, 2014). (Id. at 3-5.) The court construes the Rule 60(b)(6) motion as a collateral attack on petitioner's sentence pursuant to 28 U.S.C. § 2255. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003) ("[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application, while a motion seeking a remedy for some defect in the collateral review process will generally be deemed a proper motion to reconsider. . . . [N]ew legal arguments . . . will usually signify that the prisoner is not seeking relief available under Rule 60(b) but is instead continuing his collateral attack on his conviction or sentence." (footnote and citation omitted)). Because petitioner has previously filed a § 2255 motion, he must seek authorization from the Fourth Circuit Court of Appeals to file a second or successive § 2255 motion before the court can

consider the instant motion. See 28 U.S.C. §§ 2244(b), 2255(h).

Petitioner's motion is DISMISSED WITHOUT PREJUDICE. The court finds that petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

This 20 August 2014.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is written over a horizontal line.

W. Earl Britt
Senior U.S. District Judge